Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1994

DR. JAMES AND NORMA OKUN,
Petitioners,

versus.

STATE OF OKLAHOMA
ex rel, DEPARTMENT OF HUMAN SERVICES
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR A WRIT OF CERTIORARI

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90 pp

QUESTIONS PRESENTED FOR REVIEW[1]

1) Oklahoma Department of Human Services terminated the parental rights of two Louisiana residents, whose only contact with Oklahoma was that their children were removed from them when the father was arrested in connection with an auto incident while driving through Oklahoma, on the family's way home to Louisiana.

Oklahoma's reasoning was that the Uniform Child Custody Jurisdiction Act (UCCJA) emergency provision and general forum *non conveniens* provision together supported permanent original jurisdiction over these non-residents.

Does Oklahoma's interpretation of the UCCJA violate the due process rights of non-residents?

2) Shortly after the children were taken into Oklahoma custody, a Declaratory Judgment was issued by a Juvenile Court in Louisiana, in the parish of the family's residence, to return the children to the home state for proper proceedings.

Does Oklahoma's refusal to return the children to Louisiana violate the Full Faith and Credit Clause of Article IV §1, principles of comity, as well as Fourteenth Amendment Due Process?

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[1] The Names of the parties appear in the caption. See Rule 14.1(b) of the Supreme Court Rules.

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DR. JAMES AND NORMA OKUN,

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Petition For A Writ of Certiorari
To The Supreme Court Of The
State of Oklahoma

PETITION FOR A WRIT OF CERTIORARI

Petitioners Dr. James and Norma Okun, respectfully pray that this Honorable Court issue a writ of certiorari to review the judgment and opinion of the Oklahoma Supreme Court issued on December 13, 1994 in proceedings #82,764, entitled *Matter of C.O.* affirming the Judgment and Opinion of the Oklahoma Court of Appeals, issued on October 4, 1994 in proceedings #82,764, entitled *In the Matter of C.O. and J.O., Alleged Deprived Minor Children,* which affirmed the decision of the District Court, Terminating Parental Rights, on November 23, 1993 in proceeding # J-91-47, entitled *In the Matter of Charles and Jane Okun, Children Under the Age of 18 Adjudicated Deprived As Defined by the Laws of Oklahoma.*

OPINIONS DELIVERED IN THE COURTS BELOW

In the Matter of Charles and Jane Okun Children Under the Age of 18 Adjudicated Deprived As Defined by the Laws of Oklahoma, No. J-91-47 (Dist. Ct. Okla. Nov. 23, 1993)*(mem.)* (order terminating parental rights). App.C

In the Matter of C.O. and J. O., Alleged Deprived Minor Children, No. 82,764 (Okla. Ct. App. Oct 4, 1994) (appeal denied). App.B

Matter of C.O., No 82, 764 (Okla. Dec. 13, 1994) (order denying petition for certiorari). App. A

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE COURT IS INVOKED

This is *not* a "child custody dispute".

By Judgment rendered November 23, 1993 Oklahoma terminated the parental rights of two Louisiana residents traveling through Oklahoma with their children on their way home to Louisiana, pursuant to a petition filed by Oklahoma Department of Human Services in Pontotoc County District Court. The Oklahoma Court of Appeals affirmed the decision on October 4, 1994. The Oklahoma Supreme Court denied certiorari on December 13, 1994.

An Order granting an extension of time within which to file this petition to this Court was entered on March 4, 1995, extending the time for filing to and including May 12, 1995. *Okun v. Oklahoma Department of Human Services,* No. A-646 (U.S. March 4, 1995) Breyer, J.

Accordingly, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Okla. Stat. Ann. tit.43 §§ 501-527 (West 1990) Uniform Child Custody Jurisdiction Act (UCCJA) provides in pertinent part as follows:

§505 Prerequisites for jurisdiction

A. A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

3. the child is physically present in this State and
   a. the child has been abandoned or
   b. it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

4. a. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs 1, 2, or 3 of this subsection, or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and
   b. it is in the best interest of the child that this court assume jurisdiction.

§509 Inconvenient forum—Motion—Factors determining—Communication with court of another state—Findings and proceedings thereon

(The text of the provision is contained in App.I).

U. S. Const. Amend. XIV (Due Process Clause):

> No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law.

U. S. Const. art 4. § 1 (Full Faith and Credit Clause):

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other state.

U. S. Const. art. 4 § 2 (Privileges and Immunities Clause):

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

STATEMENT OF THE CASE

On November 23, 1993 the State of Oklahoma rendered a judgment terminating the parental rights of two married Louisiana residents, Dr. James and Norma Okun over their two minor children, Charlie and Jane pursuant to a petition filed August 19, 1993 by the Oklahoma Department of Human Services.[2] The children (aged nine

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[2] *In the Matter of Charles and Jane Okun, Children under the Age of 18 Adjudicated Deprived As Defined by the Laws of Oklahoma,* No. J-91-47

and two) were placed in Oklahoma foster care on November 6, 1991, when their father, Dr. James Okun was arrested in connection with an auto incident, while traveling by vehicle through Ada, Oklahoma with his family. The family was on their way home to St. Gabriel, Louisiana after spending a weekend in Chicago. Dr. Okun was at the time and is today, an employed practicing physician in Louisiana.[3]

Dr. Okun was released the following day.[4] The children remained in foster care in Oklahoma, (where they are today) because the Juvenile Court concluded that the children were "deprived" pursuant to a petition filed on November 14, 1991, by the Oklahoma Department of Human Services.[5]

The Assistant District Judge in Pontotoc County, Oklahoma, Martha Kilgore, to whom the case was allotted did not hold a hearing to determine whether emergency jurisdiction existed under 43 Okla. Stat. Ann. tit.§505 (A) (3).

(footnote 2 continued)
(Dist. Ct. Okla. petition filed Aug. 19, 1993)[hereinafter cited as *In re Children*].

[3] Dr. Okun, a Phi Beta Kappa graduate of Duke University, and of Albert Einstein Medical School, was employed as the resident physician at Hunt Correctional Facility in St. Gabriel, Louisiana and maintained a private practice in conjunction with Our Lady of the Lake Regional Medical Center in Baton Rouge, La.

[4] Dr. Okun was charged with "assault with a deadly weapon—an automobile" on Oklahoma State Highway 3W. There were no injuries and little to no damage to any vehicle. Oklahoma deferred prosecution on the automobile charges and accepted a *nolo contendere* plea pursuant to Okla. Stat.Ann.tit. 42 § 991c (West 1990). *Oklahoma vs. James Okun*, No. CRF 91-192 (Okla. Cr. May 25, 1993). Mrs. Okun was arrested for "interfering with police business" when she protested the police removal of her children, but released the following day and charges were dismissed. Neither parent had a criminal record.

[5] *In Re Children, Supra*, note 2, p.4.

On December 5, 1991, the parents challenged Oklahoma's exercise of *permanent* jurisdiction over their children by way of Motion to Dismiss, complaining of deprivation of procedural and substantive due process of law under the Constitution because they were non-residents.

Judge Kilgore rejected the challenge and concluded any "deprived child" *found in the county* is subject to jurisdiction regardless of where the parents of said child lived or where they were from.[6]

On December 31, 1991 Judge Kathleen S. Richey, Juvenile Court Judge for East Baton Rouge Parish, Louisiana, (the county where the Okuns reside), issued a Declaratory Judgment declaring that the children were residents of Louisiana, and should be returned for proceedings in their home state, stating as follows:

> "Louisiana is the appropriate and Constitutionally and statutorily preferable jurisdiction to conduct proceedings involving the adjudication and /or disposition of the minor children, and further, that this Court hereby notifies of its willingness to exercise said jurisdiction by hearing the adjudication and /or disposition proceeding with custody of the children being placed in foster care in the State of Louisiana pending the outcome of said proceedings."[7]

Douglas P. Moreau, District Attorney for East

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[6] Transcript of Adjudicatory Hearing, Dec. 5, 1991, *In the Matter of Charles and Jane Okun Children, supra,* note 2 p. 4. App. G, A-42.

[7] *In the matter of Charles Okun, and Jane Okun, through their parents Dr. James Okun,* No. 65,645, (Juv. Div. Parish of E. Baton Rouge, La. Judgment rendered December 31, 1991). App. C, A-33.

Baton Rouge Parish called Nancy Shew, the Oklahoma prosecuting attorney, and provided an affidavit guaranteeing he would prosecute the child dependency proceedings in Louisiana if the children were returned.[8]

On January, 2, 1992, two months after the children were initially taken into custody, Judge Kilgore filed an *ex parte* Order asserting the children had been placed in the emergency custody of the Oklahoma Department of Human Services.[9]

Judge Kilgore ignored the Louisiana judgment, and the Moreau guarantee, and did not inquire of the home state whether further proceedings should be conducted in Louisiana rather than in Oklahoma as required by the UCCJA.

On January 9, 1992, the Motion to Dismiss was denied and a "Dispositional Order" was entered finding the children to be "deprived" and ordering the parents to submit to psychological evaluation and testing.[10]

On February 16, 1992, Kilgore denied the parents' Writ of Habeas Corpus.[11] Interlocutory appeal was taken to the Oklahoma Court of Appeals from the January 9, 1992 Dispositional Order and denial of the Writ. A stay of the proceedings was denied February 18, 1992, and appeal

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[8] Affidavit, Douglas P. Moreau, *Okun v. Okla, Dept. of Human Services*, No. Civ. 92-356-C (W.D. Okla. affidavit filed March 13, 1992) (Action for Writ of Habeas Corpus). App. G, A-55.

[9] *In the Matter of Charles and Jane Okun Children Under the Age 18 Adjudicated Deprived As Defined by the Laws of Oklahoma*, No. JO-92-6 (Dist. Ct. Okla. order filed Jan. 2, 1992) *mem.* App. H, A-35.

[10] *In re Children, supra*, note 2 p. 4 (order filed Jan.9, 1992).

[11] *Id.* (order denying writ Feb.16, 1993).

denied March 30, 1993.[12]

On August 19, 1993 the Pontotoc County District Attorney filed a Petition to Terminate Parental Rights. In pre-trial motions, filed October 26, 1993, the Okuns raised once again, unsuccessfully, the jurisdictional challenge and Due Process claims.

Oklahoma formally terminated the Okun's parental rights by Judgment rendered November 23, 1993 after trial.[13] The parents appealed and raised the jurisdiction challenge. The Court of Appeals addressed the question, and adopted as its own the reasoning of the court on appeal from the January 3, 1992 Order finding the children to be "deprived"[14] and declined to revisit that reasoning.[15]

Certiorari was denied by the Oklahoma Supreme Court on December 13, 1994, from the Judgment Terminating Parental Rights. It is from this Judgment that the Okuns petition this Court for certiorari.

The Oklahoma authorities concede that the parents never physically or sexually abused their children,[16] and

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[12] *In the Matter of C.O. and J.O.*, 856 P.2d 290 (Okla. Ct. App. 1993), *cert. denied* (Okla. 1993). App. D, A-17.

[13] *In re Children, supra*, note 2 p. 4. App. C, A-15.

[14] *In the Matter of C.O. and J.O.*, 856 P2d 290. App. D, A-17.

[15] *In the Matter of C.O. and J.O., Alleged Deprived Minor Children*, No. 82,764, slip.op. at 3, para. 3 (Okla. Ct. App. Oct 4, 1994) *cert. denied* Dec. 4, 1994. App. B, A-7.

[16] Transcript of Adjudicatory Hearing, Dec. 5, 1991, *supra* note 2, at 4, Testimony of Dep't Social Services Supervisor Zane Gray, at 198-99,

that the children were in excellent physical condition. However, in the exercise of an invalidly obtained warrant, police found in the Okun vehicle, audio cassette tapes of conversations between Norma and her son Charlie, recorded at their home in Louisiana, in October of 1991, in which Charlie reported to Norma that his grandmother and members of her family had sexually abused him in Louisiana.[17]

The tapes contained a form of "scream therapy" in which the Okuns encouraged Charlie to recall the details of the incidents of abuse so that he could "expel" the painful memory, in accordance with the guidelines of a book by John N. Briere Phd., *Child Abuse Trauma, Theory and Treatment of the Lasting Effects,* Sage Publications 1992.[19]

The Oklahoma Authorities concluded that the sexual abuse of which Charlie complained never took place, that the parents were paranoid about child abuse in general and it was the parents who had emotionally abused the child by their method of having him "act out" the memory in an effort to expel it.[20]

(footnote 16 continued)
Id. at 319 (Testimony State Trooper James Peterson, of the Oklahoma Highway Dep't).

[17] Trooper Peterson swore out an affidavit claiming that Dr. Okun was a suspected "drug mule" despite evidence clearly showing he was a practicing physician in Louisiana. The audio tapes were admitted at trial of the termination of parental rights, over objection.

[19] Trial Transcript, Nov. 8-11, 1993 at 819, n. 1-9, *In re Children, supra* note 2 p. 4.

[20] Although the examining physician had concluded "no evidence of abuse", the Okuns believed that the children had been abused, based on the history given them by Charlie, and the presence of two lesions on

The Department of Human Services did not permit the Okuns to speak with or see their children from the evening they were removed into Department Custody, Nov. 6, 1991 until Dec. 5, 1991 with the exception of one monitored phone call on November 25, 1991 with Charlie. Thereafter they were permitted only two short one hour visits, supervised and heavily censored by Department case worker Zane Grey[21] who showed obvious predisposition against the parents. Visits and all communication were permanently suspended in January of 1992.[22] The parents were never informed of the children's whereabouts or the names of foster parents.

ARGUMENT AND REASONS FOR GRANTING THE WRIT

I THE OKLAHOMA INTERPRETATION OF THE UNIFORM CHILD CUSTODY ACT DEPRIVES NON-RESIDENT PARENTS OF FUNDAMENTAL DUE PROCESS.

Oklahoma has advanced an interpretation of the UCCJA by which it may *permanently* seize any parent's child

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(footnote 20 continued)
Charlie's tongue and scalp which the examining physician Dr. Coffman said "were consistent with" trauma, State's Exhibit 8 *In re Children, supra*, note 2 p. 4 and also based on the presence of blood in Jane's stool, State Exhibit 2, and the presence of yeast in Charlie's rectum since confirmed by laboratory reports ordered by the examining physician.

[21] Grey, for example, barred the Okuns from any mention to their children of the existence or purpose of the legal proceedings, or why the children were in custody.

[22] On Jan. 9, 1992 visitation was suspended with both children "until Charlie requests it." Visitation was unconditionally suspended on February 16, 1992.

at any time by simply alleging that it has, at its far reach, discovered a condition of neglect.

In *Kulko v. California Superior Court,* 436 U.S. 84, 91 (1978) (citing *Shaffer v. Heitner,* 433 U.S. 186, 198-200 (1977)) this Court writes:

> "The Due Process Clause of the Fourteenth Amendment operates as a limitation on the jurisdiction of state courts to enter judgments affecting rights or interests of nonresident defendants."

This principle is a practical one as much as it is a civil liberty; citizens of one state cannot be reasonably expected to fulfill the conflicting statutory requirements of 49 others. Nor can they be expected to adequately defend themselves against claims in a foreign venue when lives and livelihood are domiciled elsewhere.

The adoption of various "compacts" between states such as the UCCJA is an attempt by the states to effectuate *Kulko,* to reconcile diversity, and to resolve disputes in the forum most connected to the family's own traditions and relations.

A. Emergency Jurisdiction under UCCJA § 505 (A)(3) Requires a Hearing, Is Temporary Only, and Permits Protective Orders Only Pending Submission of the Custody Proceeding to the Home State.

Both Oklahoma and Louisiana subscribe to the UCCJA. The Act allows a state to assume only *temporary emergency* jurisdiction over non-residents, when an *immi-*

nent threat to a physically present child's welfare is manifest.

Justice (now Chief Justice) Calogero said of Louisiana's "emergency" UCCJA provision, which is identical to Oklahoma's:

> We did not construe La. R. S. 13:1702 (A((3) to mean that a child *visiting an asylum state* may be found to be in an emergency state of mistreatment, abuse, neglect or dependency because of allegations concerning conditions purportedly existing in the home state, conditions more appropriately and conveniently subject to the scrutiny of the courts of the domicile state."

Dillon v. Medellin, 409 So.2d 570, at 575 (La. 1982).[23]

Other states agree: if an emergency is properly found the jurisdiction is to continue only so long as necessary to contact the home state, and determine which court could correctly handle an abuse or neglect claim based on "minimum contact" type requirements, with a preference for returning the child to the home state.[24]

1. No Emergency Hearing Was Held.

This case was marked by disregard for due process from its inception. Due Process requires as a minimum that

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[23] *See generally*, Bodenheimer and Neeley-Kvarme, *Jurisdiction Over Child Custody and Adoption after Shaffer and Kulko*, 12 Univ. Cal., Davis L. Rev. 229 (1979); Coombs, *Interstate Child Custody: Jurisdiction, Recognition, and Enforcement*, 66 Minn. L. Rev. 711, 760-764 (1982).

[24] *See e.g., Curtis v. Curtis*, 789 P.2d 717 (Utah App. 1990) (Utah courts found other state not entitled under emergency jurisdiction for alleged abuse, to indefinite jurisdiction with the authority to permanently modify a child custody order. Mississippi should have contacted Utah

a State adhere to its own laws. Judge Kilgore's order placing the children in Department custody was issued *ex parte* without a hearing, and was filed January 2, 1992 two months after the seizure of the children.[25]

Furthermore at the December 5, 1991 hearing on the Okun's Motion to Dismiss, the basis for jurisdiction urged by the Juvenile Court fell under the "found in the county" provision.[26]

Interlocutory appellate review in Oklahoma failed to grant the Okuns relief because it found, that the Court (1) had timely and properly asserted emergency authority, (despite the fact that Oklahoma law required an

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(footnote 24 continued)
courts to determine best forum); *Renno v. Evans*, 508 So.2d 945 (La. Ct. App. 1991) (jurisdiction prerequisites of UCCJA listed in order of preference with home state first and significant connection second, whose purpose is to limit jurisdiction; only when maximum, rather than minimum contacts exists should a state assume power under this authority). *See also Nussbaumer v. Nussbaumer*, 442 S.2d 1094 (Fla.1983) (Florida courts determined emergency power does not confer power to make a permanent custody decree based upon allegations that the child would be subject to mistreatment if returned to the custody of parent).

[25] *In the Matter of Charles and Jane Okun Children Under The Age of 18 As Defined by The Laws of Oklahoma*, No. JO-92-6 (Dist. Ct. Okla. order filed Jan. 2, 1992) (order signed November 7, 1991) *mem.* App. F, A-35.

[26] The "found in the county" provision, contained in Okla. Stat. Ann. tit. 10 §1102 (West 1990) and Okla. Stat. Ann. tit. 1605 §A-3 (1990) was obviously directed at "county versus county" jurisdictional arguments within Oklahoma, as opposed to "state versus state". Adjudicatory Hearing, Dec. 5-6, 1991, *supra*, note 2 p. 4 App. G, A-39.

evidentiary hearing within 48 hours Okla. Stat.Ann. 10 § 1107 (C) (West 1990)),[27] (2) jurisdiction continued indefinitely, and (3) a petitioner need not prove minimum contacts between a parent and the forum in custody proceedings.[28]

2. Oklahoma ignored Louisiana's Judgment ordering the children be returned to Louisiana for Proceedings in the home state.

After proceedings were instituted in Louisiana, Oklahoma had no basis for permanent, original jurisdiction over the non-resident parents, but allowed emergency jurisdiction in this case to go on indefinitely. Oklahoma ignored the right of the Okun family to have these complicated family matters litigated at home in Louisiana, where Dr. Okun worked, and where Charlie attended school.

The issuance of Judge Kathleen Richey's order from the Juvenile Court where the Okuns resided, (App. E, A-33)(followed by East Baton Rouge Parish District Attorney Doug Moreau's guarantee to the Oklahoma authorities that he would institute and follow through on all appropriate proceedings to protect the children)(App. H, A-55), was explicit. It ended any jurisdiction asserted by Oklahoma under the UCCJA emergency provision and should have prompted Oklahoma to return the Okun

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[27] *See Magers v. Magers*, 645 P.2d 1039 (Okla. Ct. App. 1982) (District Court has duty to take evidence on issue of abuse of child to determine whether it should assume emergency jurisdiction). See also *Goldberg v. Kelly*, 397 U.S. 254, 260 (1970) (due process requires an evidentiary "hearing" before the termination of welfare benefits); *Stanley v. Illinois*, 405 U.S. 645, 652 (1972) ("What is the state interest in separating children from fathers without a hearing designed to determine whether the father is unfit in a particular disputed case?").

[28] *In the Matter of C.O. and J.O.*, 856 P.2d 290 (Okla. Ct. App. 1993), *cert. denied*, (Okla. 1993).

children to Louisiana for adjudication in their home state.[29]

Oklahoma utterly disregarded Louisiana's interest in these children, and the right of the children and the parents to proceed in a forum where visitation and counseling could take place with minimal interruption to work and home life.

3. Oklahoma may not use the "forum non conveniens" provision to bootstrap in to permanent original jurisdiction

Compounding Judge Kilgore's error of bootstrapping emergency jurisdiction into original and permanent jurisdiction, the Oklahoma Court of Appeals *In the Matter of C.O. and J.O. Alleged Deprived Minor Children*,No. 82,764, Slip. Op. at 3 (App. B, A-7), adopted the reasoning in *In the Matter of C.O. and J.O.*, 856 P.2d 290 *See, Supra*, p.8. treated Judge Richey's Order as a Motion to Transfer to a More Convenient Forum, instead of the jurisdictional mandate Judge Richey intended. The Appeals Court pointed to the forum *non conveniens* provisions of the Act, § 509 (B), (C), to justify the exercise of full scale jurisdiction, and completely by-passed the "minimum contacts" due process requires before jurisdiction may be imposed on non-residents.

The "inconvenient forum" provisions of § 509[30] have nothing to do with original jurisdiction. The forum *non conveniens* provisions are obviously only directed to Motions to transfer **once valid original jurisdiction is**

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[29] **The language of Oklahoma's § 505 (D) is an addition to the Uniform Act, which appears to elevate Oklahoma view of "best interest of the child" to a status superior to any of the Acts forgoing provisions. However, not even this broad license has been held to be an independent ground for assumption of jurisdiction.** *Holt. v. Dist. Ct. for Twentieth Dist. Ardmore, Carter County, Okla.*, 626 P.2d 1336 (Okla. 1981).

[30] App. D, A-23.

already established. Only the jurisdictional articles set forth in Okla. Stat.Ann 43 § 505 (A) (1), (2) should be a basis for permanent jurisdiction because only those provisions establish the minimum contacts required by Fourteenth Amendment Due Process, to exercise original jurisdiction over non-resident children.

In fact, the jurisdictional provisions found in §505, all point to the home state as the proper forum. Under the UCCJA, being in the home state is deemed critical to the best interest of the child. § 502 (3).

The Oklahoma Supreme Court has itself previously recognized the Due Process protection accorded the preservation of family unity, *viz.*

> "The fundamental integrity of the family unity, which had found Protection in the Due Process and Equal Protection Clauses of the Fourteenth Amendment and the Ninth Amendment, is subject to intrusion and dismemberment by the state only where a "compelling" State interest arises and protecting the child from harm is the requisite interest."

Matter of Sherol A.S., 581 P. 2d 884, 888 (Okla. 1978) (footnote omitted; emphasis in original). *Accord, Matter of Baby Girl Williams, 602 P.2d 1036, 1039 (Okla. 1979).*

What possible compelling state interest could Oklahoma have in the Okun children that Louisiana does not have in much greater measure?

II. FULL FAITH AND CREDIT — OKLAHOMA HAS BREACHED THE COMPACT PRESENTLY EXISTING BETWEEN STATES TO COOPERATE IN RETURNING NON-RESIDENT MINORS TO THE HOME STATE FOR RESOLUTION OF FAMILY MATTERS

The fifty states of this United States have formed mutual compacts designed to reasonably guarantee to one state that the courts of another state will decline the exercise of jurisdiction when the child and his family have a closer connection with another state, in compliance with the requirements of the Full Faith and Credit Clause, U.S. Const. art. 4 §1. *See* La. Rev.Stat. 13:1700 (A) (West 1983). *Accord, May v. Anderson,* 345 U.S. 528, 533 (1953) (Ohio court was not required to give full faith and credit to Wisconsin Divorce Decree awarding custody to minor children to father, when it was obtained in ex parte action in Wisconsin which had no personal jurisdiction over the mother).

In the Interstate Compact on Juveniles, for instance, both states recognize a policy of cooperating fully with other states in returning juveniles to such other states whenever their return is sought. Okla.Stat.Ann. tit. 10 § 531 et. seq. (West 1990); La. Rev.Stat.Ann. §46:1451(1) (West 1983). Similarly, both states subscribe to the Interstate Compact on the Placement of Children. This act recognizes a policy of promotion of appropriate jurisdictional arrangements for the care of children. La. Rev. Stat. 46:1700 (I) (d) (West 1983), Okla. Stat. Ann. tit. 10 §571 (I) (d).[31]

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[31] Federal law, 42 U.S.C. §675(5)(A), and (C) (West1980) (Aid to Families with Children), regarding foster care also requires foster care to take place in the state where the family resides, providing in pertinent part as follows:

> The term "case review system": means a procedure for assuring that —
>
> (A) each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and **in close proximity to the parents' home** consistent with the best interest and special needs of the child. (emphasis supplied).

The stated purpose of the Uniform Child Custody Jurisdiction Act is to avoid jurisdictional competition; the promotion of cooperation between states so that the state which can best decide the case in the interest of the child renders the custody decree; the assurance that litigation concerning custody takes place ordinarily in the state with which the child and his family have the closest connection, and, most significantly for this case, where significant evidence concerning his care and protection is most readily available. Okla. Stat. Ann. tit. 43 §502 (West 1990).

The focus on "minimum contacts" under the UCCJA reifies the Full Faith and Credit Clause as well as Fourteenth Amendment due process requirements. It guarantees that parents will litigate issues regarding the health and welfare of their children in a forum that does not prevent them from working and conducting their daily lives while this stressful litigation is pending. It also discourages forum shopping.

Only by returning the child to the state of residence for appropriate investigation in the home state can a Department of Human Services obtain a complete picture of the family life. How else can teachers', friends', family, and community input be fairly gathered and evaluated?

Oklahoma's subversion of the UCCJA in this case violates principles of comity and threatens all parents who travel freely with their children through these United States.

CONCLUSION

Louisiana imposes its own unique laws and traditions upon families for which comity demands respect. Indeed, Louisiana culture and family law have a rich history — a civil code, that took root here a century before Oklahoma existed. It is more than capable of fairly adjudicating the fate of the Okun children.

The Oklahoma authorities have by legal sophistry deprived Charlie and Jane Okun of their birthright — their parents' love, nurturing, and companionship. They have done this by exploiting the UCCJA to sequester Jane and Charlie, and by depriving Norma and James Okun of their right to fight for their children within a reasonable distance of their friends, work, and home.

The Okuns only ask for their day in court - a Louisiana court where they can feasibly comply with a plan for reunification with their children. No court can recompense the four years lost to them. Dr. Okun's position at Hunt Correctional Facility was compromised and ultimately forfeited by his absence from work due to these proceedings. The proceedings have bankrupted the Okuns of their finances and their energy.

This Court can and should act, however, to restore Jane and Charlie's interrupted childhood by returning them home to the State of Louisiana.

Wherefore petitioners request this Court to issue a Petition for Certiorari to the State of Oklahoma setting aside the Judgment rendered herein by the Oklahoma Supreme Court on December 13, 1994, in *Matter of C.O.*, No 82,764 and by the Oklahoma Court of Appeals, *in*

the Matter of C.O. and J. O., Alleged Deprived Minor Children No. 82,764 (Oct 4, 1994).

Respectfully submitted,

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700 Camp Street
New Orleans, Louisiana
70130
(504) 528-9500
Counsel for Petitioners
Dr. James Okun and his wife
Norma Okun

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, December 13, 1994

FILED
DEC 13 1994

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

79,695 **Cathleen McSorley v. The Hertz Corp. etc.**
Petition for rehearing denied.
CONCUR: Hodges, C.J., Lavender, V.C.J., Simms, Hargrave, Opala, Kauger, Summers, Watt, JJ.
DISSENT: Wilson, J. "See my dissent in this case."

80,493 **Clementine Gibson etc. v. City of Konawa, Oklahoma etc.**
Petition for certiorari denied.
CONCUR: All Justices concur.

81,582 **American National Bank of Ardmore, Oklahoma v. Mike Fox and Cindy Fox etc.**
Petition for certiorari denied.
CONCUR: Hodges, C.J., Lavender, V.C.J., Simms, Hargrave, Opala, Kauger, Summers, Watt, JJ.
DISSENT: Wilson, J.

82,144 **Uniroyal Goodrich Tire Company v. The Oklahoma Employment Security Commission et al.**
Petition for certiorari denied.
CONCUR: Hodges, C.J., Lavender, V.C.J., Simms, Hargrave, Wilson, Kauger, Summers, JJ.
DISSENT: Opala "I would grant certiorari to consider if additional evidence tendered to the agency should have been admitted.", Watt, JJ.

82,466 **Jarrell C. French etc. v. Ronald Eddy.**
Petition for certiorari denied.
CONCUR: Hodges, C.J., Lavender, V.C.J., Simms, Hargrave, Wilson, Kauger, Summers, Watt, JJ.
DISSENT: Opala, J. "I would grant certiorari and remand the appeal for reconsideration by a three judge panel."

82,764 **In the Matter of C.O. and J.O., adjudicated deprived minor children.**
Petition for certiorari denied.
CONCUR: All Justices concur.

83,261 **Rosemary C. Mulkins v. Farmers Insurance Company.**

Petition for certiorari denied.

CONCUR: Simms, Opala, Wilson, Kauger, Summers, Watt, JJ.

DISSENT: Hodges, C.J. Lavender, V.C.J., Hargrave, J.

/s/ Ralph B. Hodges

CHIEF JUSTICE

APPENDIX B

IN THE COURT OF APPEALS, DIVISION 4

STATE OF OKLAHOMA

IN THE MATTER OF C.O. and J.O., adjudicated deprived minor children.	)	
STATE OF OKLAHOMA ex rel. DEPARTMENT OF HUMAN SERVICES,	)	
Appellee,	)	
vs.	)	No. 82, 764
JAMES and NORMA OKUN,	)	NOT FOR PUBLICATION
Appellants.	)	

FILED
OCT 4 1994

APPEAL FROM THE DISTRICT COURT OF
PONTOTOC COUNTY, OKLAHOMA

Honorable Martha Kilgore, Trial Judge

Nancy M. Shew
Assistant District Attorney
Ada, Oklahoma for Appellee

David L. Nimmo
Ada, Oklahoma — For Children

John L. Hester
Oklahoma City, Oklahoma — For Appellants

MEMORANDUM OPINION

STUBBLEFIELD, J.

This is an appeal from an order entered on jury verdict terminating the parental rights of both parents after a prior adjudication that the children were deprived. After a review of the record on appeal and applicable law, we affirm.

On November 6, 1991, parents James and Norma Okun, who are Louisiana residents, were arrested in Oklahoma for assault with a dangerous weapon after they apparently rammed their automobile into two other vehicles, which they apparently erroneously believed were occupied by some enemies that had been persistently following them during a round trip to Chicago. The Okuns' children, C.O. and J.O., were taken into protective custody. Based upon the statements of one child regarding sexual abuse and the content of audio and video tapes found in Parents' car, the State of Oklahoma ex rel. Department of Human Services (DHS) sought an adjudication that the children were deprived. On January 3, 1992 the children were so adjudicated and placed in the tempory custody of DHS.[1] Nineteen months later, on August 19, 1993, the

[1] On September 7, 1993, that determination was affirmed on appeal. *In re C.O. and J.O.*, 856 P.2d 290 (Okla. Ct. App. 1993).

State filed a petition to terminate Parents' parental rights. On November 9, 1993, the cause proceeded to a three-day jury trial. The jury found that the parental rights of both parents should be terminated. The trial court entered judgment on that verdict. Parents appeal.

Where termination of parental rights is the issue on appeal, this court reviews the entire record to determine: (1) Whether there is clear and convincing evidence, *In re Termination of Parental Rights,* 847 P.2d 768 (Okla. 1993), that the children were deprived by acts and omissions of the parents as found by a prior or simultaneous adjudication, *A.E. v. State,* 743 P.2d 1041 (Okla. 1987); (2) Whether the parents had complied with a previously court-ordered plan for correcting the conduct that resulted in the deprived-status adjudication, *In re B.M.O.,* 838 P.2d 437 (Okla. Ct. App. 1992); and, (3) Whether termination of parental rights is in the best interest of the children. *In re J.M.,* 858 P.2d 118 (Okla. Ct. App. 1993); 10 O.S. Supp. 1993 § 1130. It is only where the evidence does not substantially support the trial court's order that its judgment will be reversed on appeal. *In re Rhyne,* 318 P.2d 448 (Okla. 1957).

In this case, there previously had been an adjudication that the children were deprived, 10 O.S.1991 and Supp. 1993 § 1130(A)(3)(a), and a determination had been made that that condition had been caused by acts or omissions of Parents. Section 1130(A)(3)(b). Therefore, the trial court was presented with the issues of (1) whether Parents had "failed to show that the condition" that led to the adjudicated finding that the minor children were deprived had been corrected within three months or within any ex-

tended time given by the trial court to best serve the interest of the children, section 1130(A)(3)(d); and, (2) whether it would be in the best interest of the children to terminate parental rights. Section 1130(A)(3)(c).

Although raised as their fifth proposition of error, the jurisdictional issue must be resolved before any other proposed errors are addressed. However, Parents raise the identical jurisdictional issues in this appeal as were presented to the court in *In re C.O.*, 856 P.2d 290 (Okla. Ct. App. 1993). We find the jurisdictional issue was resolved by the court therein, and the issue will not be revisited in this appeal.

In their first three propositions, parents contend that they were not given "a clear standard of conduct to which they must conform," were "never given sufficient opportunity to correct conditions" and had made "sincere and extensive effort to change the conditions leading to the adjudication."

We find that Parents were well apprised of the actions required of them to *commence* meeting the written treatment plan for regaining custody of their children. After the January 3, 1992, adjudicatory hearing, the trial court first ordered the parents to "submit to [the court-appointed psychologist, Dr. Heitland] for psychological assessment, testing and evaluation" or to "submit for such testing to a psychologist agreed to by all parties and approved by Dr. Heitland." Dr. Heitland presented a list of psychologists in Louisiana from which Parents could choose a psychologist to complete the assessment,testing and evaluation. The trial court further ordered that:

Any psychologist performing said assessment, testing and evaluation shall provide to the Court the following information concerning James Okun and Norma Okun.

1. Diagnosis
2. Description of Disorder
3. Prognosis
4. Treatment Recommendation
5. Possibility of reunification of the family after the recommended course of treatment has been accomplished.
6. What time frame will be needed to fully accomplish the recommended course of treatment.

However, in its order after dispositional hearing on February 28, 1992, the trial court found that "the parents have failed to comply with this court's order of January 3, 1992 requiring them to submit for psychological assessment and evaluation." The trial court ordered Parents to submit to psychological "assessment, testing, and evaluation" and to "follow the recommendations of their therapist for further assessment, evaluation and/or treatment." Parents later moved to continue another review hearing based upon the purported fact that their chosen psychologist had "terminated" them because he had concluded "you will be better served by a psychologist who has some experience in evaluating or treating patients who have been ritualistically, physically and sexually abused, where sadomasochistic themes and possible satanic worship has been involved." The trial court, at the hearing on April 17, 1992, granted the continuance and gave Parents

additional time to proceed with psychological evaluation. Parents were then ordered to be evaluated by a psychologist, whom they had chosen — Doctor LeCorgne. A subsequent motion for continuance sought postponement of another review hearing because the "psychological evaluation by Dr. Le Corne [*sic*] was postponed at the request of the parents." Dr. LeCorgne's evaluations and recommedations, though dated July 7, 1992, were finally filed with the trial court on August 18, 1992.

Dr. LeCorgne found Parents deeply disturbed, suffering from induced psychotic disorder and /or delusional disorder. He recommended that the children not be returned to Parents and that both Parents undergo "psychotherapeutic intervention."

At a hearing on September 4, 1992, at which the report of Dr. LeCorgne was presented, the trial court heard testimony and argument of counsel. The trial court reviewed the treatment plan with Parents, "advising them of the consequences of compliance or non-compliance with the plan." The trial court noted its concern about the six-month period it had taken to get the ordered evaluation. The trial court ordered Parents to "[u]ndergo psychotherapy with a licensed psychologist or psychiatrist, subject to approval and acceptance by the court," to "begin counseling immediately," and to "[s]chedule and attend all appointments with the therapists and follow prescribed recommended threatment set forth by the therapist." The trial court specifically stated to Parents its concern "that we could be in the same position a year from now if they're going from therapist to therapist and not finding one that they feel

meets their needs." The trial court further stated, "I would advise the Okuns that continued refusal to get into therapy with a particular therapist is certainly going to bear on the outcome of this case . . .."

On December 4, 1992, the trial court found that reasonable efforts had been made to reunite the family and, again, reiterated its orders about psychotherapy. However, a March 5, 1993, report to the trial court stated that Parents "have made no progress on the treatment plan. The Okuns continue to feel they have not harmed their children, and therefore treatment is not necessary." An order of the trial court of the same day again reiterated the requirements that Parents do the things delineated above. The order was again restated on June 25, 1993. Finally, on August 19, 1993, the State filed a petition to terminate the parental rights.

Thus, it is clear that Parents were, indeed, given "a clear standard of conduct to which they must conform." As for their claim that they were not given sufficient time to correct the conditions, the record demonstrates otherwise. Parents relate a series of attempts to obtain psychotherapy. They maintain it was not their "fault that they were terminated by the first professional who actually provided treatment," that "several mental health professionals would not see them for periods of months," that "other professionals would begin treatment only to abort that treatment upon determining that this case was beyond their areas of expertise, or that "some of the professionals were not accepted by the State and ultimately not accepted by the Court." However, the record is replete with evidence that the real problem was that Parents refused

to accept that their aberrant behavior harmed their children, they obstructively dragged their feet, and they ultimately totally failed to obtain the necessary mental health treatment that might have allowed them to be reunited with their children.

In a related vein, Parents contend that DHS "worked contrary to the court's service plan leading to its delay." They point to the provision in the treatment plan that provided for their visitation with the minor children and assert that the DHS worker had not fulfilled DHS's duties in making such visitation possible.[2] The evidence in that regard is indicative of Parents overall behavior.

A review of the "written treatment plans" reveals that the DHS worker's intent was for the children to get appropriate treatment so that the family could be reunited *after* Parents had complied with the court-ordered assestment, evaluation *and treatment*. Indeed, in December 1992, the DHS worker had contacted the Louisiana Department

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[2] The record reveals that the trial court denied Parents' January 19, 1993, application for writ of habeas corpus seeking the return of the children to their custody, asserting that the trial court lacked subject matter jurisdiction. The trial court's denial of that application was affirmed on appeal to this court. *In re C.O.*, No. 81,104, September 7, 1993. In that opinion, this court stated:

> The evidence demonstrated that it clearly *was* a goal in this case to reunite the family. However, the evidence also supports a conclusion that it was Parents' lack of cooperation and obstinacy which threatened to make that impossible. Parents flatly refused counselling or treatment. Under the circumstances, the trial court did not err in conditioning visitation upon the counselling and/or treatment which an expert testified was vital to assist the older child *and to reunite the family.*

of Human Services for assistance in providing services to Parents with the goal of family reunification. A Louisiana worker called Mother, who refused to talk with him. The Louisiana worker again contacted Parents in February 1993, offering to assist them in complying with the court-ordered treatment plan. Parents cancelled a February 8, 1993, visit with the Louisiana worker. Six weeks later, the Louisiana DHS worker notified Parents that Oklahoma had requested a home study with the view of placing the children in the home *if they complied with the treatment plan.* On April 29, 1993, the worker went to Parents home, explained the treatment plan and provided the names, addresses and telephone numbers of three doctors who agreed to take their case. When asked if they would make some gesture of compliance with the orders, Mother indicated that she would not do so.

Further, the Oklahoma DHS worker cooperated and provided supervision for Parents' visits with the children. He delivered letters to the son from Parents. It was only after Dr. Heitland, the son's psychologist, recommended that visitation be suspended that the trial court ordered that visitation be suspended *until such time as Parents commenced complying with the written treatment plan.*

Therefore, the record is totally void of any evidence that DHS created any "problems in correcting behavioral conditions" such that the order terminating parental rights should be reversed. *In re J.M.,* 858 P.2d 118 (Okla. Ct. App. 1993). The record, instead, shows a refusal on Parents part to undergo treatment aimed at the delusional behavior that so negatively impacted the children.

Parents' last proposition is that they should have been given additional time to comply with the trial court's service plan. They point out that they had finally obtained a psychiatrist, Dr. Katta, to provide counselling for them. However, the role of this purported therapist again indicates Parents' refusal to undergo any meaningful treatment. Dr. Katta testified that his "main emphasis [was] to treat acute adjustment reaction . . . called separation anxiety disorder" caused by Parents' separation from their children. He apparently accepted, without question, the accounts of Parents about events leading to the adjudication of the children as deprived. He saw nothing wrong with acting out with the children — graphically demonstrated in the tape-recorded episodes — the children's purported sexual abuse, which had been discounted by several medical professionals. Nor did he apparently see any harm to the children in the seance-like episodes where the children were exposed to Father's adult-onset remembrances that his parents had slain 1,000 to 4,000 infants in satanic ceremonies where he, a child, was required to participate in sodomizing the dead or dying victims.

Additionally, Dr. Katta had written a letter to the Governor of Louisiana in which he affirmatively stated that Father had been "falsely accused of causing the accidents involving two local citizens in Ada, Oklahoma . . . was forced to plead nolo contendere to these charges and to accept the five years probation for a crime he did not commit," that the two minor children had been "forcibly taken from [Parents] and adjudicated as deprived and neglected." Dr. Katta related to the governor that the trial court had ordered psychiatric treatment for Parents but that he had found "absolutely no psychopathologies ex-

cept for extreme separation anxiety."

Though Dr. Katta had absolutely no contact with the children, he had also written a letter to Parents' attorney: "I recommend and advise the immediate return of the [minor] children to their parents to avoid any further irreparable damage to the children and to [Parents]." He also wrote in his medical report to the trial court:

> As the parents are long-time students of the philosophy of Aesthetic Realism, it was certainly reasonable that they would apply the principles to help themselves and their children. In accordance with accepted psychiatric principles it is clear that the best way to deal with and be rid of the trauma of abuse is to "repetitively express it."

Therefore, daring the almost two-year span that the children were in DHS custody, Parents had denied any need to obtain counseling and had persistently refused to participate. Instead, they found a psychiatrist, who would not treat them for their extreme delusions but would accept their behavior as normal and, indeed, become a legal advocate on their behalf. Therefore, we cannot agree that any error was committed by not allowing Parents more time to comply with the written treatment plan, when the evidence indicated that they were not attempting to comply.

The evidence substantially supports the judgment of the trial court. That judgment is AFFIRMED.

TAYLOR, P.J., and GOODMAN, J., concur.

APPENDIX C

IN THE DISTRICT COURT
IN AND FOR PONTOTOC COUNTY

IN THE MATTER OF	)	
CHARLES AND JANE	)	
OKUN CHILDREN	)	
UNDER THE AGE OF	)	CASE NO. J-91-47
18 ADJUDICATED	)	
DEPRIVED AS	)	
DEFINED BY THE	)	
LAWS OF OKLAHOMA	)	

FILED
Book 7 - Page 595
NOV 23 1993

ORDER TERMINATING PARENTAL RIGHTS

On the 8th day of November, 1993, this matter came on for trial on the State's Petition For Termination of Parental Rights. All parties announced ready for trial and the following appearances were made:

David Nimmo, Appointed attorney for respondents;
James and Norma Okun, Parents of respondents;
John Hester, Attorney for parents of respondents;
Nancy Shew, Assistant District Attorney.

The Court finds that it has jurisdiction over the respondent, the Indian Child Welfare Act does not apply and correct names and dates of birth of the respondents are

Charles Okun - 6/27/82 and Jane Okun - 1/17/90.

The jury being duly empaneled and sworn returned verdicts, separately filed herein, terminating the parental rights of James Okun and Norma Okun to the minor children Charles Okun and Jane Okun.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the parental rights of James Okun and Norma Okun, as to the minor children Charles Okun and Jane Okun are terminated.

The children shall remain in the custody of the Department of Human Services for appropriate placement.

All parties are Ordered to reappear on December 20, 1993 at 3:30 P.M. for a Review Hearing without further notice from the Court.

/s/ Martha K. Kilgore
JUDGE OF THE DISTRICT COURT

APPENDIX D

In the Matter of C.O. and J.O., alleged deprived children.

James OKUN and Norma Okun, Appellants,

v.

The STATE of Oklahoma, Appellee.

Nos. 79391, 79004.

Released for Publication by Order of the Court of Appeals of Oklahoma, Division No. 3.

Court of Appeals of Oklahoma,
Division No. 3

March 30, 1993.

Certiorari Denied June 22, 1993.

In deprived children proceeding, the District Court, Pontotoc County, Martha K. Kilgore, J., adjudicated children deprived and ordered children to remain in temporary custody of Department of Human Services for placement. Parents sought review. The Court of Appeals, Hansen, C.J., held that: (1) trial court did not abuse its discretion by exercising emergency jurisdiction over proceeding, and (2) evidence supported "deprived children" adjudication.

Affirmed.

Appeal from the District Court of Pontotoe County, Martha K. Kilgore, Judge.

Mark Henricksen, Lanita Henricksen, El Reno, for appellants.

Nancy M. Shew, David L. Nimmo, Ada for appellee.

MEMORANDUM OPINION

HANSEN, Chief Judge:

Appellants, James and Norma Okun, (Father and Mother, or parents), seek review of the trial court's dispositional order which denied their motion for new trial and which ordered Appellant's children, C.O. and J.O., whom the court had adjudicated deprived, to remain in the temporary custody of the Department of Human Services (D.H.S.) for appropriate placement. The trial court assumed emergency jurisdiction over the children under 43 O.S.1991, § 505(A)(3), finding that the parents had mentally abused the children, that the parents were unable to provide an emotionally stable home environment. The trial court further determined it was not in the children's best interest that the parents see or communicate with the children. On appeal, Appellants maintain the trial court did not have jurisdiction and the evidence did not support the deprived adjudication. We affirm.

On the night of November 6, 1991, the children and mother were riding in the family vehicle driven by Father in Pontotoc County, Oklahoma. Father intentionally rear-ended two vehicles in front of his vehicle, knocking one off

the road. The drivers of the vehicles reported the incidents to police and the police arrested both Father and Mother at a convenience store in Ada. Father was arrested on two counts of Assault and Battery with a Dangerous Weapon and Mother was arrested for Obstructing an Officer in Performance of his Duty. C.O. and J.O., then nine years old and two years old, respectively, were in the back of the car during the attacks on top of piled-up belongings.

After their parents' arrests, the children were placed in the emergency custody of D.H.S. and a foster parent came to pick them up. C.O. told the investigating trooper that he had been physically and sexually abused for nine years and the J.O. had been abused for one year. C.O. explained the abuse in detail, charging his maternal grandmother, aunts and uncles with physical abuse. C.O. told the officer Father ran the two cars off the road because Father thought the abusers were in the cars and were trying to kill them.

During an inventory of the car, the officers found 143 cassette tapes containing notations such as "C.O.'s scissors", and "Sex with God" and "Murder" on them. Suspecting child abuse or child pornography, the trooper sought and obtained a search warrant of the car. The day after their parents' arrests, the trial court ordered C.O. and J.O. into temporary custody, based in part on the testimony of a child welfare worker. After reviewing several of the tapes, the district attorney's office filed a petition on November 14, 1991, alleging C.O. and J.O. deprived children. Several of the tapes were admitted at trial during the adjudicatory hearing.

[1] Appellants first challenge the trial court's jurisdiction. They assert the children are residents of Louisiana and that no emergency existed under 43 O.S.1991, §505(A)(3)(b). They also assert Louisiana is the only state with "minimum contracts", that under 42 U.S.C. § 675(5)(A)(C) the children should have been put in the "least restrictive setting", and that the trial court erred in failing to transfer the case to Louisiana.[1] Appellee maintains the trial court has jurisdiction under 43 O.S.1991, § 505(A((3)(b) and 10 O.S.1991, § 1107(A)(1).

[2] Section 504 of Title 43 of the Oklahoma Statutes defines "custody proceeding" as used in the Uniform Child Custody Jurisdiction Act (UCCJA) as including child neglect or dependency proceedings. Section 1101(4) of Title 10 defines "deprived child" and states that the phrase "dependant and neglected" shall mean deprived. This proceeding to adjudicate C.O. and J.O. as deprived clearly falls with the provisions of the UCCJA. *See In the Matter of A.S.*, 811 P.2d 910 (Okla.App.1991).

[3,4] Section 505 of Title 43 sets forth the jurisdic-

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[1] Section 675 of Title 42 of the United States Code defines terms as used in the federal statutes regarding Aid to Families With Dependent Children. Paragraph (5) defines "case review system" as a procedure to assure, among other things, that each child have a "case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child ..." Appellants have not shown how this section applies to C.O. and J.O. Nor have they presented argument or authority to support the alleged violation of such section. Furthermore, this argument was not presented to the trial court. Assignments of error which are not adequately briefed and which were not presented to the trial court, will not be considered on appeal. *Wetsel v. Independent School District 1-1*, 670 P.2d 986 (Okla.1983); *In the Matter of N.L.*, 754 P.2d 863 (Okla.1988).

tional prerequisites for a court in this state to hear child custody matters. This section contains four prerequisites: they are alternative, and if the requirements of any one of them are met, an Oklahoma court has jurisdiction. *Holt v. District Court*, 626 P.2d 1336 (Okla.1981); *In the Matter of the Guardianship of Walling*, 727 P.2d 586 (Okla.1986).[2] Appellees maintain the trial court had jurisdiction to hear this matter under subsection (A)(3)(b) of § 505. The subsection provides:

> A. A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:
>
> 3. The child is physically present in this state and:
>
> b. It is necessary in an emergency to protect the child because he had been subjected to or threaten-

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[2] In their brief, Appellants maintain the trial court did not have jurisdiction over "the family" and that the children's due process rights were violated. A petitioner need not demonstrate minimum contacts under *International Shoe v. State of Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945) between a parent and the forum in custody proceedings under the UCCJA. Custody is in effect an adjudication of a child's status, which falls under the status exception of *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977). *See Hudson v. Hudson*, 35 Wash.App. 822, 670 P.2d 287, 293 (1983). In *Hudson*, the Washington Court of Appeals concluded where a petitioner has complied with required notice provisions, the assumption of jurisdiction by a forum meeting the jurisdictional prerequisites of the UCCJA satisfies the 'traditional notions, of fair play and substantial justice' of *Shaffer*. *Hudson*, 670 P.2d at 294-295. Appellants have not pointed to any defects in notice. *See also In the Matter of the Adoption of J.L.H.* and *J.P.H.*, 737 P.2d 915 (Okla.1987); specifically page 919 and notes 11 and 13.

> ed with mistreatment or abuse or is otherwise neglected or dependent; * * *

Subsection B of § 505 provides that physical presence alone of a child in this state is not by itself sufficient to confer jurisdiction .

[5-7] Oklahoma has adopted a two-step approach to the assumption of jurisdiction for cases under the UCCJA. The first step is for the court to determine if it has jurisdiction. Next, the court must consider whether it *should exercise jurisdiction. Holt,* at 1341; *Magers v. Magers,* 645 P.2d 1039 (Okla.App.1982). Section 505 clearly empowers the court to assume jurisdiction where an emergency exists and a child may be endangered. *Id.* at 1040. The district court has the duty to take evidence on the issue of abuse to determine whether emergency jurisdiction is proper. *Id.* Under 10 O.S.1991, § 1107(C), whenever a child is taken into custody as a deprived child without a court order, the officer taking the child into custody must immediately report such fact to the court. Within two judicial days following such detention, the court shall conduct a hearing to deter- whether the child should remain in protective custody.

In the instant case, D.H.S. assumed custody of the children the night both parents were incarcerated. The evidence shows the children were non-residents and no relatives were available. The trial judge was informed of the fact of detention in the early morning hours of November 7, 1991, and issued a temporary custody order after a hearing that day. The evidence also shows Father and Mother believed relatives were in the two cars in Ada and were trying to kill them and that Father intentionally

rear-ended the vehicles of two Oklahoma residents in Ada, with the children in the car, unbuckled and lying on top of piles of belongings. C.O. relayed tales to the foster parent and trooper of long-term, bizarre physical and sexual abuse, although never accusing his parents. There is no transcript in the appellate record of the hearing held on November 7, 1991, so we cannot determine whether the search warrant had been executed and the tapes admitted at this hearing. Regardless of whether the tapes were reviewed by the trial court at the November 7, 1991, hearing, we believe the evidence was quite sufficient to establish an "emergency" as that term is used in 43 O.S.1991, § 505(A)(3)(b). *Holt,* 626 P.2d at 1345; *Magers,* 645 P.2d at 1041; *Roberts v. District Court of Larimer County,* 596 P.2d 65, 68 (Colo.1979).

[8] Having determined that the trial court had jurisdiction, we must determine whether the trial court erred in exercising such jurisdiction and erred in denying Appellants' motion to dismiss or transfer. Appellants actually filed two motions to dismiss or transfer. The first motion was filed on December 5, 1991, before the adjudicatory hearing, and attached only a Louisiana residential lease in support thereof. The second motion was filed on January 2, 1992, one day before the adjudicatory hearing, and attached a declaratory judgment from a district court of the State of Louisiana, wherein that court declared it was the preferable jurisdiction and was willing to hear the case and place the children in Louisiana foster care.

The policy considerations which the court must take into account when deciding whether to exercise jurisdiction are clearly set forth in 43 O.S.1191, § 509. That section pro-

vides in toto:

> A. A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.
>
> B. A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.
>
> C. In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:
>
> If another state is or recently was the child's home state;
>
> 2. If another state has a closer connection with the child and his family or with the child and one or more of the contestants;
>
> 3. If substantial evidence concerning the child's present or future care, protection, training and personal relationships is more readily available in another state;

4. If the parties have agreed on another forum which is no less appropriate; and

5. If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in Section 2 of this act.

D. Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

E. If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedins upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

F. The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

G. If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their

witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

H. Upon dismissal or stay of procedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate official for forwarding to the appropriate court.

I. Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

Both parties admit at the time jurisdiction was assumed by the Oklahoma court, the children were not the subject of any proceedings in any court in Louisiana. Although the parents had complained to the authorities in Louisiana that their children had been sexually abused by relatives in Louisianna, the Louisiana authorities had declined to prosecute the matter.[3]

Looking at the factors enumerated in subsection C to

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[3] Extensive physical and psychological evaluations performed on the children in Louisiana, indicate both children were physically healthy and that no signs of abuse as described by C.O. and the Mother were found. These examination reports were considered by the trial court at the adjudicatory hearing.

determine whether Oklahoma is an inconvenient forum, it appears that prior to the incidents in Ada, Louisiana is or was recently the children's home state. The evidence shows the family had driven to Chicago from Louisiana to visit Mother's older son sometime prior to the Ada incident. However, neither parent could adequately explain how they came to be in Oklahoma. The evidence shows they traveled to several states after leaving Chicago, supposedly trying to escape Mother's relatives who were chasing them, and that they ended up in Oklahoma by taking a "wrong turn". Louisiana probably had a "closer connection" as that phrase is used in subsection (C)(2), to the children and the family, because that is where the family lived and the children attended school.

Under paragraph 3, the trial court should consider if substantial evidence concerning the child's present or future care, protection, training and personal relationships is more readily available in another state. The parents argue that because most of the cassette tapes were made in Louisiana, that Louisiana has more evidence than Oklahoma. Regardless of where the tapes were made, the tapes themselves are evidence which was seized by the Oklahoma authorities pursuant to an Oklahoma search warrant during an investigation of the incidents in Ada. In addition, evidence of the parents' conduct regarding the safety (or lack thereof) of these children is located in this state. Evidence of the children's present emotional and mental states and relationships with their parents are located in this state.

Under paragraph 4, the parties had not agreed on another forum. Although the juvenile court of the parish of

East Baton Rouge, Louisiana, issued an order declaring it to be the more appropriate forum, such an order, by itself, does not require the Oklahoma court to decline jurisdiction after it had already started proceedings. Nor have Appellants shown that the exercise of jurisdiction by an Oklahoma court would contravene any of the policies of the UCCJA as stated in 43 O.S.1991, § 502. The parents also aver Oklahoma is an inconvenient forum because they live in Louisiana, which makes visitation difficult. This argument is without merit where, as in this case, the trial court has denied the parents any visitation until C.O. is ready to see his parents. The record indicates C.O. does not wish to see his parents.

[9,19] The determination that it should decline jurisdiction because of "inconvenient forum" is discretionary with the trial court. *Holt*, 626 P.2d at 1341; *G.S. v. Ewing*, 786 P.2d 65 (Okla.1990). The trial court has discretion to determine whether its exercise of jurisdiction is appropriate considering the best interests of the children involved. *Id.* at 72. After reviewing the record, we cannot say the trial court abused its discretion by exercising jurisdiction over the instant cause.

[11] Next, Mother and Father maintain the evidence does not support the deprived adjudication. They say the deprived adjudication violates the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. Sec. 675(5)(A)(C). They maintain the tapes which were admitted into evidence at the adjudication hearing are not evidence of mental and emotional abuse, but show Appellants were using "scream therapy" to heal C.O.'s sexual abuse and were made by Appellant in practice of their religion of

"Aesthetic Realism" They cite 10 O.S.1991, § 1101(4) which priovides in part:

> No child who, in good faith, is being provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof shall be considered, for that reason alone, to be a deprived child...."

Appellants further argue there is no evidence that J.O. suffered emotional abuse and that a child less than two years of age, who cannot speak, is "incapable of suffering emotional abuse".

"Court supervison over the custody and welfare of children is equitable in nature, and the findings and judgment of the trial court will not be set aside unless clearly against the weight of the evidence." *In the Matter of A.S.*, 811 P.2d 910 (Okla.App.1991). In its adjudicatory order, the trial court found Father and Mother were not able to provide a physically safe environment for the children, there had been mental and emotional abuse of the children by the parents, and that the parents are unable to provide a stable home environment in the emotional and psychological sense. In its dispositional order, the trial court additionally found that the parents believe that their "treatment", which the court considers abusive, is doing some good for C.O. and that the children will continue to be subjected to such treatment.

With regard to Appellants' contention that Aesthetic Realism is a religion and that their treatment of

the children is protected under 10 O.S.1991, § 1101(4), we do not find evidence and Appellants have pointed to none, which would establish such practices as spiritual care in accordance with a recognized church or religion by a duly accredited practitioner as those terms are used in Section 1101. Father testified Mother is an "aesthetic consultant" and referred to it as a "philosophy". Furthermore, the section provides that a court may not adjudicate a child deprived *solely* for religious reasons. Appellants have not shown the trial court's findings were based on this factor.

According to Father, after C.O. told his parents that he and J.O. had been sexually and physically abused by relatives, this triggered Mother's and Father's memories of similar abuse during *their* childhood. There is evidence that Father believes that he was forced to watch the abuse and murder of thousands of children by his own parents. Father and Mother believe both C.O. and J.O. have suffered sexual abuse and that in order for the children to overcome the "power" that these people have over them, the children must participate in reenacting such abuse with their parents. Although the trial court had ordered Father and Mother to undergo psycholoLical evaluation, parents had failed to comply prior to the dispositional hearing.

Several cassette tapes were admitted at the dispositional hearing. Father testifies these tapes were accurate representations of sessions the parents had with C.O. In the tapes, C.O. was forced to "recreate" with his parents incidents regarding the slashing of his penis with scissors, and someone putting scissors inside J.O.'s vagina. In several of the tapes, C.O. would scream and cry and ask his mother "not to do it" and tell her "you're scaring me".

Father insists he and Mother have never sexually abused the children and C.O. has also denied any sexual abuse from his parents. The psychologist who has counseled C.O. since the beginning described parents' sessions with C.O. as "detrimental" and "traumatizing", and concluded the sessions which he listened to on the tapes constitute "extreme emotional abuse". In addition, the trial court had before it the reports of the Louisiana physicians who examined the children and the recommendations of the Foster Care Review Board.

[12] It is clear from reading Father's testimony that he and Mother believe their "treatment" of C.O.'s alleged abuse is appropriate and that the techniques and Language employed are appropriate for a ten year old. To find a child deprived, the trial court need not have concluded the children suffered emotional or mental abuse. Under 10 O.S. § 1101(4)(b), a deprived child means a child who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, cruelty, or depravity on the part of his parents. The fact that the parents believe their treatment of the children is not abusive or neglectful does not prevent the court from finding the children deprived.[1] Aside from the evidence regarding mental and emotional abuse, there was

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[4] In defining "abuse" as that term is used in 10 O.S.1991, § 1130(A)(5)(a), the Oklahoma Supreme Court compared abuse as used in that section with "abuse" as used in the juvenile code. The Court found that unlike the criminal statutes, there is no mens rea requirement in the definition of abuse in Section 1130 and that "[P]arental intent is irrelevant to the suffering inflicted upon the child when that child is starved or tortured." *In the Matter of S.T.G.*, 806 P.2d 636 (Okla.1991). We find the same reasoning applicable here.

evidence that Father intentionally rammed two cars on a highway outside of Ada because he mistakently believed abusive relatives were in the car. Both children were in the car at the time. This evinces a total disregard for the physical safety of the children.

Appellants' final assignment of error that the tapes were unlawfully seized and therefore, their rights under the Fourth Amendment to the United States Constitution were violated, was not presented to the trial court nor was it adequately briefed. It will not therefore be considered on appeal.

After reviewing the evidence in its entirety, we conclude the trial court's order is supported by clear and convincing evidence that the children, C.O. and J.O., are deprived. The judgment of the trial court is AFFIRMED.

BAILEY, P.J., and HUNTER, J. concur.

APPENDIX E

In The Matter Of	THE JUVENILE COURT 65,645
CHARLES OKUN, and JANE OKUN, through their parents DR. JAMES OKUN, NORMA OKUN	JUVENILE DIVISION PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

JUDGMENT

On consideration of the verified Petition herein, the attachments thereto, and the memorandum in support thereof, the Court considering the law and the evidence in favor of a Declaratory Judgment on behalf of Petitioners herein,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the Petitoners, DR. JAMES OKUN and NORMA OKUN, on acting on behalf of the minor children, CHARLES OKUN and JANE OKUN, declaring that Louisiana is the appropriate and Constitionally and statutorily preferable jurisdiction to conduct proceedings involving the adjudication and/or disposition of the minor children, and, further, that this Court hereby notifies of its willingness to exercise said jurisdiction by hearing the adjudication and/or disposition proceeding with custody of the children being placed in foster care in the State of Louisiana pending the outcome of said proceedings.

This 31st day of December, 1991, Baton Rouge, Louisiana.

/s/ Kathleen Stuart Richey
HON. KATHLEEN S. RICHEY

FILED

DEC 30 1991

/s/ Illegible
DY. CLERK OF COURT

CERTIFIED
TRUE COPY

DEC 17 1993

BY /s/ Illegible
DEPUTY CLERK

APPENDIX F

Book _____

IN THE DISTRICT COURT
IN AND FOR PONTOTOC COUNTY

STATE OF OKLAHOMA

IN THE MATTER OF	)	
CHARLES AND JANE OKUN	)	
CHILDREN UNDER THE	)	JO-92-6
AGE OF 18 AS DEFINED BY	)	
THE LAWS OF OKLAHOMA	)	

FILED
Jan 2, 1992

ORDER

Now on this 7th day of November, 1991 the above styled and numbered cause comes on for hearing. The following persons appeared:

Joe Howry, Child Welfare Worker.

The Court advised that the respondents were placed in the emergency custody of the Department of Human Services.

The Court Orders the respondents to remain in the custody of the Department of Human Services pending the filing of a Petition.

All parties are ordered to reappear on November 14,

1991 at 2:00 p.m. for the determination of the filing of a Petition.

/s/ Martha K. Kilgore
JUDGE OF THE DISTRICT COURT

APPENDIX G

DECEMBER 5, 1991 ADJUDICATORY HEARING

I would — I do have some additional information about some matters in Louisiana and some of the allegations, I suspect, will try to be presented here today have been previously investigated which I don't believe that I go into detail in my motion. However, I do believe that I hit the high points in the motion, Judge.

THE COURT: Ms. Shew, your response to the Motion to Dismiss.

MS. SHEW: Your Honor, it's the State's position that under Title 10, Section 1605-A-3-b, that the State does have jurisdiction under an emergency situation.

To start with, on November the 6th, a Wednesday evening, both parents, Dr. and Mrs. Okun were placed under arrest. The children, Charles and Jane, having no place to go, so were taken into custody of Child Welfare and placed that night in foster care.

Further, it goes on to say in Section B, it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse.

It's the State's position that through the evidence

that came to light after the parents were arrested that the children, indeed, have been subjected (page 7) to mental and emotional abuse, not physical — necessarily physical or child abuse in a physical sense, so the State thinks there's no doubt that jurisdiction does exist in this State.

I think it's stronger here even than in Louisiana because the evidence that we were able to gather — according to the information we were able to gather from employers in Louisiana, Dr. Okun had only had his employment for two to three months at that facility in the town where they were from. I don't know what the contacts with Louisiana were there previously.

So, that is the State's position, Your Honor, that we do have jurisdiction under Section 3-B.

THE COURT: Okay. Just a minute, sir. Mr. Nimmo, your response.

MR. NIMMO: Please the Court, Your Honor, I agree with the District Attorney that the section she cited gives basic subject matter or gives the Court the right to assume jurisdiction under the circumstances so the children being left without parents to care for them that evening; and further Title 10 Section 1107 provides that a peace officer or an employee of the court without a court order may tak a child into protective custody in the event that its surroundings would endanger its welfare. And, certainly, being left (page 8) along at the scene of the arrest of its parents would leave a child in danger of its welfare.

And then, under Title 10 Section 1102, it provides —

which is the District Court of — the jurisdiction of the District Court provides that upon the filing of a petition or upon the assumption of custody pursuant to 1107, which is the section just referred to, the District Court shall have jurisdiction of the child who is or is alleged to be various things, including deprived, who is found within the county and of the parents of said child regardless of where they live or where they're from.

So I think — it's clear that the jurisdiction, the taking of the children at the time, the Court's emergency protective order was proper. Under 1107 and 1102, then, provides that once properly taken, the Court retains jurisdiction to deal with the child thereafter. Whether or not this Court should subsequently transfer this case to Louisiana would involve other matters that aren't in evidence, at least, before the Court at this time.

THE COURT: Thank you. Mr. Edwards.

MR. EDWARDS: Very briefly, primarily in response to Mr. Nimmo's argument, a portion of it anyway. In Section 1102, I believe if the Court (page 9) would read that statute in association with the other statutes of Title 10, that really goes more toward county versus county jurisdictional arguments, as opposed to state versus state. Even the cases decided under that statute talk about people who live in one county versus the other county, but they do not talk about another state.

That, I think, would take it out of the 1102 argument because in this situation we're dealing — there's no question that Pontotoc County is where we are and that's where

the people were. But the other question is there was no — also no question that they're residents of Louisiana, and that's the place that should have jurisdiction of this matter.

THE COURT: Mr. Baugh:

MR. BAUGH: Yes, Your Honor, just briefly. In response to Ms. Shew's argument, Your Honor, the petition filed in this case does not specifically plead the allegations that Ms. Shew has set forth or as alleged in 10 O.S. 1605. More specifically, Judge, about an emergency situation or danger; that's not pled in the petition in this case. The Motion to Dismiss is as to the petition, Your Honor.

In addition, attached to my motion is a lease of the residency of the Okuns in Louisiana. Ms. Shew made (page 10) some reference to some employment of two months. Judge, if you look at the copy of the lease, it started on July 1st. This incident happened in November; that's longer than two months.

As to Mr. Nimmo's argument, I would respond, Your Honor, that basically our Motion to Dismiss is based on constitutional grounds and the United States Constitution dealing with minimum contacts, dealing with residency, dealing with notions of fair play in hailing people from foreign states into our jurisdiction and requiring them to come here and defend themselves and present evidence. And it's more as to the United States Constitution and minimum contacts, and I think 10 O.S. Section 16, at seq. discusses those jurisdictional prerequisites in the numerous statutes that I've cited for the Court there.

In addition, I'm not aware of any emergency protective order issued in the case. In addition, I would inform the court, and I believe Mr. Okun has another job waiting for him when he gets back, and I believe we have a letter in the file in Louisiana as to that fact.

And that's — that's basically my response to their points, Judge.

THE COURT: All right.

(page 11) MR. NIMMO: For the record, Your Honor, I would object to the attachment of a lease form to a motion and the Court relying on that at all. It's hearsay information which we've had no opportunity to cross examination the landlord.

THE COURT: Do you have any response to that objection, Mr. Baugh?

MR. BAUGH: Judge, basically, it's evidence. It's signed by Dr. Okun. It would be his statement as an admission by the party; be a statement therein. I think it's clearly relevant to determine residency. And that brings up another point, Your Honor.

In this petition that they have filed, they allege in Paragraph One, Your Honor, that the aforesaid children are residents of Pontotoc County, State of Oklahoma. They list down here at the bottom that the parents are residents of Saint Gabriel, Louisiana. The children have been residing with their parents, Judge, in Louisiana, not Pontotoc County.

THE COURT: I understand that. I've taken the opportunity to read your brief in support of your Motion to Dismiss prior to coming into the courtroom, and I find some of the points important and have, in fact, looked at the issue of jurisdiction prior to the time that it was raised today because it did concern me.

(page 12) However, I am satisfied that under the provisions of Title 10 Section 1102, as well as Title 10 Section 1605, Sub-paragraph — Paragraph A-3-b, that this State can assume jurisdiction over the children and proceed with this hearing.

The purpose of the Uniform Child Custody Act is, of course, to prevent conflicts between states concerning the — any actions taken concerning the children, and there has not been any indications that there's been any proceedings in the State of Louisiana concerning the custody of the children.

Because the children were found in the county as provided under Title 10 Section 1102 and Section A-3 of 1605, that they are presently in the state. It is necessary in an emergency to protect the children because he has been subjected to or threatened with misstreatment or abuse or is otherwise neglected or dependent.

The children were taken into custody, pursuant to verbal order of this Court on the — the early morning hours, I believe, of November 7th. The worker appeared the following day indicating that both parents were incarcerated at that time. The Court issued an emergency custody order for the children to remain in (page 13)the

the department and set a hearing date five judicial days later which was on November 14th, at which time the petition was filed.

So, I'm going to find that the petition was timely filed, and I'm going to overrule your Motion to Dismiss. Do you have anything you want to state for the record, Mr. Baugh?

MR. BAUGH: No, Your Honor.

THE COURT: Okay. Is the State ready to proceed?

MS. SHEW: Yes, Your Honor, the State just needs to notify the first witness who's working here in the courthouse and was continuing to work until we were ready.

THE COURT: All right. Would you go get your first witness, please.

MR. EDWARDS: If I may, there are some issues that I think need to be discussed among the attorneys involved. We may be able to shorten the length of the hearing somewhat if we were able to just have about 15 or 20 minutes to discuss those things now. I realize we're starting a little late and we've just started, and I hate to ask to take a break right now, but I believe the State has no objection to it and would like to try to work a few things out if we could.

(page 6)FEBRUARY 28, 1992 DISPOSITIONAL HEARING

There was an additional motion entitled, "Supplement to Motion for New Trial" and "Motion for Requested Judgment" filed the same date.

Mr. Cook, those are your motions; you may proceed at this time.

MR. COOK: Your Honor, in substance the Motion for New Trial and the supplemental motion will be submitted by the pleadings; however, there are a couple of other additional reservations and declarations which I need to make at the request of co-counsel.

Dr. James Okun and Norma Okun are unwilling participants in this proceeding and in this court. They wish to preserve and reserve all federal and constitutional rights and claims for adjudication in federal court. The declaration and reservation is made pursuant to England versus Louisiana State Board of Medical Examiners, 375 United States Reporter, 411, Page 415, United States Supreme Court decision in 1964.

Additionally, Dr. Okun and Mrs. Norma Oklun object to the proceedings due to lack of jurisdiction and failure of proceedure in follow the two-day rule wherein Dr. Okun was taken into custody and the children were taken into custody November the 6th on a Wednesday, and November the 14th was when the hearing (page 7) was held, and the children have been in custody without a notice of a hearing in compliance with the two-day rule.

The remainder of the motion has been filed with the Court, and we're not going to submit any argument on it. We're going to allow the pleadings to stand for themselves;

wherefore, we request that this Court grant a new trial on the issue of the adjudication of the depravity of the children, Charles Okun and Jane Okun.

THE COURT: Thank you. Mr. Nimmo.

MR. NIMMO: Your Honor, I would call the Court's attention to its order titled, "In the Matter of Charles and Jane Okun, Children under the age of 18", as defined by the laws of Oklahoma JO 92-6 entered by the Court on the 7th day of November, 1991, which is the day following the verbal emergency custody order granted by this Court.

In that order the Court ordered that the Respondents remain in the custody of the Department of Human Services pending the filing of a petition and directed that all parties appear on November 14th. The Court — it is reflected in the order that the Court had evidence from Joe Howry, a child welfare worker, at the time that it entered that order. And I believe, Your Honor, that kicks in the five-day rule which says (page 8) that a petition must be filed within five days or the Court's emergency jurisdiction fails.

I would also remind the Court that at that time both Dr. Okun and Norma Okun were represented by Counsel, George Braly, who could have sought — filed motions or sought any additional hearings or appearances had the parents so requested but none were filed.

With regard to the Motion for New Trial, the parties have argued this position before the Supreme Court of the

State of Oklahoma, and I have come to conclude that the issue for the Court is narrowed rather significantly. I don't think anybody can dispute that this Court has emergency power. If we find a child laying in a bar ditch along I-35, I don't believe that even Dr. Okun or his counsel would suggest that this Court does not have the power to take that child into emergency custody to deal with the child. Regardless of what the Kulko Case says or the International Shoe says, that is an emergency power granted to courts in the nature of parents patria.

The question becomes how long does that last, how long does that jurisdiction go. I believe that the Oklahoma statute, juvenile statutes answer that question in establishing the five-day rule that we're (page 9) going to allow the courts this sort of emergency custody to take a child into its care, protect that child until the district attorney, the prosecuting attorney in this state has an opportunity to investigate the circumstances that exist to determine whether or not a petition should be filed alleging the child to be one of the categories in the juvenile code.

And that is exactly what this Court did based upon the information that it received. And, in fact, the District Attorney did file a petition within the five-day period, at which time the parents appeared, were advised of the petition, represented by counsel at that time, a Mr. Briscoe, I believe, from Luther, Oklahoma, who appeared with them and received that petition and advised them throughout.

Subsequent, then, to the filing of the petition what happens. Does the Court somehow lose its jurisdiction when it's got a case before it. I submit, Your Honor, that

the jurisdictional question then falls into the Uniform Child Custody Jurisdiction Act itself, which says when a court has a petition in front of it, when a litigant seeks to evoke the power of the court with regard to children that may have custody issues involved, then the Uniform Child Custody Act must be looked at by the Court to determine

(Page 13)

and that, therefore, those orders are valid and proper and should not be overturned, nor should the Court grant a new trial based on jurisdictional complaints.

THE COURT: Thank you. Ms. Shew.

MS. SHEW: Your Honor, I'd just like to add that the State is requesting that the Motion to Dismiss and Motions for New trial be denied for the reason that since they've been filed, the jurisdictional argument has gone on to the Supreme Court twice: Once when they filed on February 10th for an emergency — I believe emergency order for a stay which was denied — a stay of this Dispositional Hearing. And then again on February 21st when they filed a motion to — for the Supreme Court to assume original jurisdiction, which motion we had to — for which motion we had to submit briefs and then have oral arguments and which motion was also denied.

And so, I think this issue has been rehashed so many times that I think it's clear that the court was correct in assuming original jurisdiction and then continuing that jurisdiction. And so, we'd ask that these two motions be denied.

THE COURT: Mr. Cook, any response?

MR. COOK: Yes, your Honor. In response to Ms. Shew's argument, the Supreme Court has reviewed (page 14) some separate arguments presented by Counsel for the Okuns. There's currently still pending before the Supreme Court an Application to Assume Original Jurisdiction which will be reviewed by the total court on the 9th of March, even further for an argument for continuance.

But the issue of Motion for New Trial is ripe here. The appeal that has been filed in the Supreme Court and the Motion to Stay filed with it, the Supreme Court has determined it was unripe becaues we still have a remedy in trial court. And should we be denied here, then we would be ripe for the Supreme Court.

In response to Mr. Nimmo's argument, there's never been an indication that the children be released or left in a bar ditch or anything like that. They were at a convenience store. We never indicated that the children should be left at a convenience store while the parents were taken into custody.

We don't believe that 113 days after November the 6th, that an emergency still exists. There is no tapes being made today. The tapes were made in Louisiana. There's no emergency in Oklahoma. The emergency, if any, existed in Louisiana.

Further, in response to Mr. Nimmo's argument that there's no case pending in Louisiana, it's not the (page 15) Okuns' burden to institute criminal proceedings or juvenile

proceedings against themselves in Louisiana. It's the State of Oklahoma and the State of Louisiana's burden to see that a cause is instituted down there. I can't bring it; it would be a conflict of interest. The Court of Oklahoma cannot bring criminal or juvenile proceedings in Louisiana; however, the State of Oklahoma through the District Attorney can call Doug Morrow, the District Attorney of East Baton Rouge Parish and request that a juvenile proceeding be commenced down there. And we have no evidence that that's been done. So, Mr. Nimmo's claim that there's no proceeding, I can't bring a proceeding, the Court can't bring a proceeding; however, the State of Oklahoma can, and through comedy concept of federalism, one state should foster the interest of another state and see that these children are transported to Louisiana. And the adjudication properly lies in Louisiana through the police powers of Louisiana for the health, education, and welfare of these children.

Your Honor, we still urge that there's no jurisdiction to have the Dispositional Hearing. The arguments of Counsel for the State and for the children are valiant; their intentions are good. However, the interest of federalism and the — honoring the sister (page 19) were represented by Mr. Hughes and Mr. Edwards; and then again when Ms. Fournet appeared for the Okuns at that time.

I'm going to reiterate my rulings concerning those situations as I did during the trial and indicate that the tapes were not seized in violation of the parents' Fourth Amendment rights and were properly admitted into

evidence.

The arguments that you've made today, that the Court was in violation of the requirement for a show cause hearing within 48 hours of the time that the children were taken into custody is reflected by the fact that — or is dealt with the Court's order entered as JO-92-6, which Mr. Nimmo — is that the proper number? What's the number of that order?

MR. NIMMO: I believe it is 6, and I assume it would be 91.

THE COURT: That's what I had a question about. Is that it right there?

MR. NIMMO: Oh, yes, JO-92-6, Your Honor, is the number shown on the instrument.

THE COURT: All right. I'm not sure what —

MR. NIMMO: Shows to have been — it's file stamped, Your Honor, January 2nd. I assume that's why it had the 92 number.

(page 20) THE COURT: Okay.

MR. NIMMO: However, it's dated November 7th of '91.

THE COURT: That hearing was conducted within the 48-hour period that the children were taken into

custody. At that time the Court was advised and had independent knowledge that the parents were incarcerated at the time of the hearing. The court also took information from the worker that there indicated there would need to be further investigation concerning possible abuse and/or mistreatament of the children.

And based upon that information, the court then was bound by the five-day rule requiring that a petition be filed or that the children be released, and the Court file does indicate that the show cause hearing took place on November 7th. The court — or the District Attorney filed the petition on November 14th which was five judicial days which is within the statutory limitation.

MR. COOK: Your Honor.

THE COURT: Just a minute. The only other argument I might address is the provisions of the cases that have dealt with these sections under the Uniform Child Custody Jurisdiction Act, I think are primarily (page 21) or entirely divorce cases. And the difference in those cases and in this case is that once emergency jurisdiction is acquired by the new state, then the parties are obligated and have a standing to go into what we might call the home state or the old state to file an action and seek relief.

A juvenile case is different in that it's brought by the State, it's brought by the District Attorney, and I know of no proceeding by which a District Attorney from the State of Oklahoma can go into the State of Louisiana and require that an action be brought there. I think given the

difference between the two types of cases, I don't think that the juvenile proceedings are bound strictly by the case law that is appearing under the Uniform Child Custody Jurisdiction Act; and at this point I'm going to deny the Motion for New Trial in all respects.

And I think we have a Motion for Continuance; is that correct, Mr. Cook, and that's your motion?

MR. COOK: Yes, Your Honor. The only thing I don't understand is this case — the order in JO 92-6. The — is that filed in Case No. J 91-47?

THE COURT: No, That is an individual order that was entered by the Court that we filed strictly as a JO number before — the J case numbers are reserved (page 22) for petitions when they are filed.

MR. COOK: Uh-huh.

THE COURT: If there is a prior hearing as there often is when a child is taken into custody and a show cause hearing is held, any orders filed prior to the time petitions are filed simply as JO cases and JO numbers.

MR COOK: The number indicates that it's in a 1992 case.

THE COURT: I think the actual written order was not filed until the file stamp date there that you see which was January 2nd.

MR. COOK: That's correct, Your Honor. Okay.

Thank you for clarifying that.

Yes, Your Honor, and the Motion for Continuance due to the effect of Mrs. Okun not being present at the moment. I'm also going to incorporate that into the argument. Dr. Okun and Mrs. Okun have traveled a considerable amount of miles to be here; whereas, Counsel for the children and for the State and respectively, even Dr. Heitland have traveled probably less than five miles to attend this hearing.

The — Mrs. Okun in good faith waited until 4:00 o'clock yesterday to await the order of Judge Robin Cauthron, Judge of the Western District of Oklahoma Federal

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

JAMES OKUN, M.D., and NORMA OKUN, on behalf of their minor children, CHARLES OKUN, age 9, and JANE OKUN, age 2,	)	
Plaintiffs,	)	
v.	)	NO. CIV.-92-356-C
OKLAHOMA DEPARTMENT OF HUMAN SERVICES; ZANE GRAY: JANE DOE and RICHARD ROE, WILLIAM N. PETERSON, DISTRICT ATTORNEY in and for the 22nd Judicial District State of Oklahoma; NANCY M. SHEW, ASSISTANT DISTRICT ATTORNEY, in her official capacity and individually; and THE HONORABLE MARTHA K. KILGORE, Judge of the District Court, State of Oklahoma, in her official capacity and individually,	)	FILED MAR 13 1992
Defendants	)	

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, THE UNDERSIGNED NOTARY, DID APPEAR DOUGLAS P. MOREAU, who, being duly sworn, did depose and say as follows:

That he is the District Attorney of the 19th Judicial District, East Baton Rouge Parish, State of Louisiana.

That on Thursday, February 27, 1992, at the request of Michelle Fournet, a Baton Rouge attorney of his acquaintance, and professor Paul R. Baier, of the LSU Law Center, co-counsel for Dr. and Mrs. Norma Okun in the proceedings herein, he called Nancy Shew, and inquired as to the nature of the child custody proceedings instituted by her involving the Okun children Charles Okun and Jane Okun.

A TRUE COPY: /s/Warren L. Mengis

WARREN L. MENGIS
Notary Public 3/16/92

That Ms. Shew was cooperative and courteous and explained the nature of the Oklahoma child dependency proceedings that she had instituted on behalf of Oklahoma in the District Court in Pontotoc County, Oklahoma.

That he informed Ms. Shew that as the District Attorney of East Baton Rouge Parish his office would be willing to cooperate with Oklahoma authorities in any respect necessary to protect the interests of the Okun children, and that if information was provided by Ms. Shew warranting prosecution of child dependency proceedings in Louisiana, or of any other prosecutable conduct occurring in his jurisdiction, he would use the authority of his office and his responsibility as District Attorney of the 19th Judicial District to institute said proceedings.

That he has been advised of a declaratory judgment entered by Family Court Judge Kathleen Richey, on December 31, 1991.

That Ms. Shew stated to him during their conversation that she was planning to call him regarding the case. To his knowledge, prior to his conversation with Ms. Shew, no inquiries had been made to the District Attorney's Office of the 19th Judicial District regarding the Okun custody matter or any possible related criminal charges.

That the above facts are true and correct, to the best of his knowledge and belief, and that he would testify to same at the preliminary hearing set for March 13, 1992, before the federal district court in Oklahoma City,

Oklahoma, if his schedule permitted, and likewise at the hearing on the merits of the habeas corpus petition.

SWORN TO AND SUBSCRIBED TO, this 11th day of March, 1992.

/s/ Douglas P. Moreau
DOUGLAS P. MOREAU

/s/ Warren L. Mengis
WARREN L. MENGIS
Notary Public

A TRUE COPY: /s/ Warren L. Mengis
WARREN L. MENGIS
Notary Public 3/16/92

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above affidavit has been served on all defendants/respondents herein by first-class U.S. postage prepaid and by Federal Express shipment, or upon counsel for defendants/respondents known to me, this 11th DAY OF MARCH, 1992.

/s/ Paul R. Baier

PAUL R. BAIER

A TRUE COPY: /s/ Warren L. Mengis

WARREN L. MENGIS,
Notary Public 3/16/92

APPENDIX I

§ 509. Inconvenient forum—Motion—Factors determining—Communication with court of other state—Findings and proceedings thereon

A. A court which has jurisdiction under this act[1] to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

B. A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

C. In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

1. If another state is or recently was the child's home state;

2. If another state has a closer connection with the child and his family, or with the child and one or more of the contestants;

3. If substantial evidence concerning the child's present or future care, protection, training and personal

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[1] Section 501 et. seq. of this title.

relationships is more readily availaable in another state;

4. If the parties have agreed on another forum which is no less appropriate; and

5. If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in Section 2 of this act.[2]

D. Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

E. If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

F. The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

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[2] Section 502 of this title.

G. If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

H. Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

1. Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact. Laws 1980, c. 285, § 9, eff. Oct. 1, 1980. Renumbered from Title 10, § 1609 by Laws, 1990, c. 188, § 1, eff. Sept. 1, 1990.